

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

MANUEL MATEO-EVANGELIO, JAIME)	
TREJO-CARDONA, GILBERTO CERVANTES-)	
VEGA, REYNALDO VILLALOBOS-MARTINEZ,)	
EMILIO REYES, MARIA DE LOS ANGELES)	
GONZALEZ-ROMAN, RAMIRO CERVANTES-)	
VEGA, FRANCISCO CARMELO MATIAS-)	
CASTRO, PABLO GONZALEZ-ROMAN,)	
BENIGNO VILLAGOMEZ-GARCIA, and)	
SERGIO NARCISO LOPEZ-JUAREZ, on behalf)	CLASS ACTION
of themselves and all other similarly situated)	
persons,)	
)	
Plaintiffs,)	
)	
v.)	
)	
TRIPLE J PRODUCE, INC., HOCUTT)	Civil Action No.:
BROTHERS, INC., HOCUTT FARMS, INC.,)	7:14-cv-302-FL
JUDY HOCUTT, JOEY M. HOCUTT, JAMES)	
MICHAEL HOCUTT, and M. JAY HOCUTT,)	
)	
Defendants.)	
)	

AFFIDAVIT OF M. TRAVIS PAYNE

M. TRAVIS PAYNE, being first duly sworn, deposes and says as follows:

1. I am submitting this affidavit in support of the Plaintiffs' request for attorney's fees and costs in the above-captioned matter. The opinions expressed in this affidavit are made in accordance with the standards currently applied under 29 U.S.C. § 216(b), 42 U.S.C. § 2000e, and 42 U.S.C. §§ 1981, 1983 & 1988.

2. I graduated with honors from the University of Michigan Law School in May, 1978. I have been licensed to practice in the State of North Carolina since September, 1978. I am also admitted

to practice in each of the three federal district courts in North Carolina, as well as the Fourth Circuit Court of Appeals and the Supreme Court of the United States.

3. In the course of my legal career in North Carolina, I have handled numerous cases before state administrative agencies, including employment cases involving issues of just cause and violation of constitutional rights, as well as civil rights cases involving issues of race, sex, or disabilities discrimination before the Office of Administrative Hearings. I have also handled numerous workers' compensation cases before the North Carolina Industrial Commission.

4. I have litigated numerous cases in North Carolina district and superior courts, and I have handled numerous appeals to the North Carolina Court of Appeals and North Carolina Supreme Court. Many of these cases have been in the area of employment and civil rights law, including cases involving issues of pay, bonuses, and overtime under both federal and state statutes.

5. I have litigated a number of matters before federal administrative agencies, including handling whistleblower cases before the Administrative Law Judges of the Department of Labor, and claims on behalf of unions or individual workers before the National Labor Relations Board.

6. I have also litigated either individually or with co-counsel, numerous cases in all three districts of the United States District Courts of North Carolina. These cases were also predominantly in the area of employment and civil rights law, with quite a number involving issues of pay under the Fair Labor Standards Act.

7. I have also successfully argued a case before the Supreme Court of the United States involving the discharge of a "whistleblower" from employment at a nuclear fuel plant in Wilmington, North Carolina. That case is English v. General Electric, 496 U.S.72, 110 S.C. 2270, 110 LED.2d 65 (1990).

8. I have participated as counsel for *amicus curiae* on a number of occasions before North Carolina appellate courts as well as the federal Court of Appeals for the Fourth Circuit and the Supreme Court.

9. In the course of my career, I have been asked to address law school classes or other gatherings on issues of employment law and civil rights. I have also prepared manuscripts and spoken at a number of legal seminars. These include at least the following:

"Practical Aspects and Considerations in Bringing a Civil Rights Action", August, 1988 for the North Carolina Academy of Trial Lawyers (hereinafter "NCATL.")

"Trial Practices for Employment Discrimination Cases: A Plaintiff's Perspective", May, 1995 for the North Carolina Bar Foundation (hereinafter "NCBF")

"Wage and Hour Laws", May, 1995, NCBF

"Wage and Hour Laws", June, 1997, NCBF

"Public Employees' Rights Under the Constitution of North Carolina", May 2000, NCATL.

"Recent Supreme Court Decisions Making States Immune from Federal Laws", October, 2001, NCATL.

"Federal Whistleblower Statutes", May, 2004, NCATL.

"DOL Wage and Hour Regulations Promulgated April 23, 2004, and Effective August, 2004", December, 2004, Employment Law task Force of Legal Aid of North Carolina

"Motion Practice and Pre-Trial Procedures in State Court and the Federal District Courts", May, 2006, NCATL.

"Wage and Hour Laws", March, 2007, Employment Law Task Force, Legal Aid of North Carolina

"Ethical Issues that Arise During the Representation of Groups of Plaintiffs", March, 2009, for the North Carolina Advocates for Justice (hereinafter "NCAJ")

"The Inter-Relationship Between Unemployment Benefits and Workers' Comp", December, 2010, NCAJ

"Representing Employees Subject to Just Cause Protections under the State Personnel Act", February, 2011, NCAJ

"Things to Watch Out for in Sweeping Releases", March, 2011, NCAJ

"Elements and Procedure for Claims under the Retaliatory Employment Discrimination Act (RED)", December, 2011, NCAJ

"Twenty Years Later, Sides and its Impact Today", February, 2015

"Restrictions from the Americans with Disabilities Act on Questions That May Be Asked of Job Applicants", December, 2015, NCAJ

10. I have also published one article: "Claims for Violations of State Constitutional Rights", Trial Briefs, January, 2001, pp. 24-29.

11. Over the course of my career, I have spoken on numerous occasions on the rights of employees at meetings or conventions of labor organizations or other workers' groups.

12. During my career, I have served one term on the Employment Law Council of the North Carolina Bar Association, I have served two terms as Chair of the Civil Rights Section of the North Carolina Academy of Trial Lawyers, and served one term on the Executive Committee of the Workers' Compensation Section of the North Carolina Advocates for Justice. I am, and have been for some time, co-chair of the Amicus Committee of the Employment Law Section, and I am, and have been for some years, a member of the Amicus Committee of the North Carolina Advocates for Justice.

13. I have extensive experience in civil rights, employment discrimination, and wage and hour litigation. I am a principal of the firm of Edelstein and Payne in Raleigh, North Carolina, and founded this firm and have practiced with it since 1982. My firm primarily handles employment and civil rights cases, workers' compensation cases, and FLSA/wage and hour claims.

14. It is my experience and opinion that wage and hour and employment litigation requires specialized skills and is a unique and fairly complex area of practice. Because of these factors, it ordinarily is impractical for an attorney with a general practice to take wage and hour or employment cases. Accordingly, attorneys in the employment area rightfully command a higher hourly rate than in some other areas of practice.

15. There are relatively few attorneys in this state who handle wage and hour employment cases for workers, especially for low wage workers for small amounts of back wages who are unable to pay fees and/or expenses. It is also difficult to find counsel to represent low wage workers in wage claims since often the amounts in question are relatively small compared to the time and expense that is required to litigate those types of claims.

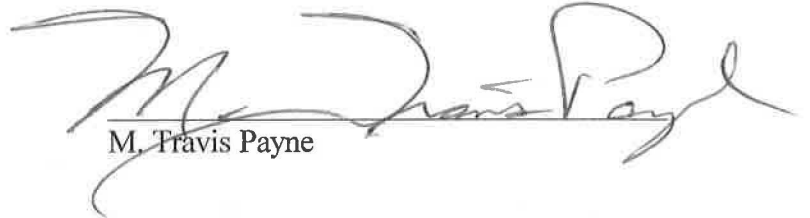
16. My office is in the Eastern District of North Carolina; however, I also handle cases in the Middle and Western Districts of North Carolina. My current hourly rate usually ranges from \$350 - \$400 per hour, although I sometimes reduce this rate depending on the client's ability to pay, the complexity of the legal issues, the likelihood of success, and whether I have a prior or longstanding relationship with the client.

17. I am familiar with the market rates for experienced plaintiffs employment lawyers whose offices are located in the Wake, Durham, or Orange County, and who practice in the Eastern District of North Carolina. It is my opinion that the market rate for lawyers in the Eastern District of North Carolina for attorneys with similar skills and experience as mine, ranges from \$350 - \$450 or more.

18. I have known Mr. Willis professionally for probably 30 or more years, including co-counseling a collective action FLSA case with him several years ago. I am familiar with the quality of his work, and his knowledge and skill in employment matters, and particularly in FLSA/wage and hour

matters. In my opinion, he is one of the most knowledgeable practitioners in North Carolina in the area of FLSA collective actions. I believe that a fee of at least \$400 an hour is a reasonable and appropriate hourly rate for a lawyer with his experience and abilities.

This the th13 day of September, 2016.


M. Travis Payne

Sworn to and subscribed before me
this the 13 of September, 2016.

Angela M. Nemeth
Notary Public
My Commission Expires: 7/23/2021

